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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,715	03/03/2004	Gregory M. Glenn	056707-5001-01	4303
9629 7590 07/27/2007 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			EXAMINER KIM, YUNSOO	
			ART UNIT 1644	PAPER NUMBER
			MAIL DATE 07/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,715	GLENN ET AL.	
	Examiner	Art Unit	
	Yunsoo Kim	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 257-362 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) See Continuation Sheet is/are allowed.
- 6) ☒ Claim(s) 262, 264, 280, 282, 288, 298, 300, 316, 318, 324, 334, 336, 352, 354, 356 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims allowed are 257-261,263,265-279,281,283-287,289-297,299,301-315,317,319-323,325-333,337-351,353,355 and 357-362.

DETAILED ACTION

1. Claims 257-362 are pending.
2. In light of applicants' provision of support and filing of terminal disclaimer, the rejections set forth in the previous office action mailed 3/27/07 have been withdrawn.
3. The following new rejection is necessitated upon further review of the application.
4. The following is a quotation of the first paragraph of 35 U.S.C. 112:
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. Claims 262, 264, 280, 282, 288, 298, 300, 316, 318, 324, 334, 336, 352, 354 and 356 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a New Matter rejection.

The specification and the claims as originally filed do not provide a written description for a phrase "gas powered gun" as in claims 262, 298 and 334, a phrase " nucleic acid" as in claims 264, 288, 300, 324, 336 and 256 and a phrase " binding B subunit of a bARE, a toxoid of a bARE" as in claims 280, 282, 316, 318, 354 and 356.

Applicant's provision of written support in claims 167 and 199 for the phrase "gas powered gun" as in claims 262, 298 and 334 does not constitute the written support the limitation because the originally filed claims (as in preliminary amendment filed on 3/3/04) and the specification did not disclose such limitations.

Moreover, the phrase " nucleic acid" as in claims 264, 288, 300, 324, 336 and 256 in the context of antigen and/or adjuvant is not supported in the originally filed claims and the specification.

Art Unit: 1644

The specification on p. 7-8 as Applicants provided discloses the nucleic acid in terms of genetic immunization wherein the genetic immunization drawn to administering of "plasmid DNA" which encodes protein of interest in a subject. However, the citation of "nucleic acid" encompasses RNA, siRNA or other forms of DNA which are not involved in genetic immunization.


Furthermore, Applicant's provision of written support in claims 185, 217 and 249 for the phrase "gas powered gun" as in claims 262, 298 and 334 does not constitute the written support the limitation because the originally filed claims (as in preliminary amendment filed on 3/3/04) and the specification did not disclose such limitations.

6. Claims 257-261, 263, 265-279, 281, 283-287, 289-297, 299, 301-315, 317, 319-323, 325-333, 337-351, 353, 355 and 357-362 are allowable.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yunsoo Kim whose telephone number is 571-272-3176. The examiner can normally be reached on M-F, 9-5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Yunsoo Kim
Patent Examiner
Technology Center 1600
July 18, 2007


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